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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

EX PARTE OR LATE FILED

Dear Chairman Hundt:

The Small Business Administration (SBA) is aware that the Federal Communications Commission ("Commission") is preparing to issue rules for conducting an auction of spectrum for personal communication services (PCS). We share your belief that PCS holds significant potential to revolutionize wireless communication. We also know that it is important that the Commission meet its statutory mandate to give certain "designated entities" (small businesses, minority and women-owned businesses, and rural telephone companies) the opportunity to become PCS service providers.

With this Congressional directive in mind, I am forwarding to you some recommendations designed to assist you in facilitating broader PCS participation by such entities. We have a particular interest in the Commission's definition of a "small business" and in any restrictions on access to capital. We also believe that certain other measures could have an enormous positive impact.

SPECTRUM BLOCK AVAILABILITY

Small businesses do not have the financial resources to compete in an open PCS auction against very large enterprises. Their access to capital typically is much more limited than that of large companies. To give designated entities, including small businesses, a reasonable chance to become PCS providers, it is essential that the Commission allocate a block of spectrum designated solely for their bidding (perhaps excluding any such entities whose average annual gross receipts for the past three (3) fiscal years exceed \$100 million, or an even lower maximum size). Reasonable attribution and affiliation rules can be used to discourage fronts or abuses.

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We are concerned that designated entities be given the opportunity to succeed once they have acquired their share of the spectrum. The spectrum made available to them must be of sufficient size that small businesses can compete against the spectrum blocks that were made available to large businesses in Major Trading Areas (MTAs) on June 9. At a minimum, the 30 MHz Basic Trading Area (BTA) block should be set aside for bidding only by designated entities. This spectrum block would give designated entities the best chance of competing in the marketplace while maintaining affordable system buildout costs.

DEFINITION OF "SMALL" DESIGNATED ENTITY

For PCS purposes, SBA recommends that a "small business" be defined as one whose average annual gross receipts for its past three (3) fiscal years do not exceed \$40 million.

This definition isolates those companies that have significantly greater difficulty in obtaining capital than larger enterprises. Companies with less than \$40 million in gross revenue cannot take advantage of economies of scale available to larger enterprises in wireless communications. At the same time, a company with \$40 million in revenue is sufficiently large that it could survive in a competitive wireless communications marketplace. It also is our understanding that the Commission applies different regulations to certain common carriers with less than \$40 million dollars in gross revenue. For all of the above reasons, we suggest that the Commission adopt this definition.

In defining size, SBA typically looks to the entity itself and to those persons who own and control it. For many purposes, we disregard passive investment altogether, as long as the passive investors do not have the power to exercise control of the entity. By passive investors, we generally refer to owners of non-voting stock or owners of limited partnership interests who do not have an active role in managing the entity. In our minority enterprise program, we traditionally have restricted outside investment to 49% or less in ownership. More recently, we have concluded that outside investors should be permitted to hold passive and/or non-controlling ownership interests which do not exceed a 65% share in the aggregate, as long as no outside investor holds the largest single block of ownership in the entity or exercises management control. We would recommend a similar approach by the Commission. More restrictive rules might deny small businesses and other designated entities access to adequate capital and make it more difficult for them to compete successfully in the PCS arena.

To assist in preventing undue influence or other anti-competitive behavior, we would suggest that the Commission prohibit ownership in a designated entity by any competing service provider in the same Trading Area. We see no reason, however, to prohibit designated entities from combining in a consortium or joint venture, as long as each has an active role and a proportionate voice in decisionmaking.

RESTRICTIONS ON TRANSFER

In directing the Commission to provide special assistance to designated entities, Congress clearly desired to ensure that they would operate PCS networks, not just sell or transfer their licenses to larger providers. Accordingly, SBA strongly supports measures designed to discourage or prevent the early transfer of designated entity licenses to non-designated entities. Outside investors should be permitted to sell their interests to other similar investors who meet the guidelines referred to above (since affording investors an exit strategy will improve access to capital). Provision can be made for hardship waivers, in the Commission's discretion. In general, however, designated entities should be required to sell their licenses only to other designated entities for a prescribed minimum period of time.

An appropriate balance might be to prohibit the transfer of any such license prior to the licensee meeting the first buildout milestone, as required by the Commission's June 9 decision on reconsideration in Gen. Docket No. 90-314.¹ To the extent possible, the transfers made after the five-year period should be to other designated entities. If no designated entity is willing to purchase the license, then the Commission should have discretion to allow the licensee to transfer it to a non-designated entity. In the latter event, the non-designated entity purchaser should reimburse the Treasury for the difference in purchase price between the designated entity purchase and a similar purchase of spectrum for a non-designated entity.²

AUCTION SEQUENCE AND TIMING

It is important that the date for auctioning designated entity licenses follow soon after the auction for Major Trading Areas (ideally, not more than four to six weeks after). This would help in establishing guidelines for the valuation of designated entity licenses and would allow time for such entities to complete arrangements for capital. At the same time, it would not put successful designated entity bidders significantly behind the major players in PCS with respect to the building of infrastructure.

On a final note, SBA also is very interested in assuring that designated entities have a meaningful opportunity to participate in the building of the PCS network infrastructure on behalf of all PCS licensees. While perhaps not directly related to the

¹ As you know, that order requires PCS licensees to provide service to one-third of the population in their service territory within five years of the initial grant of the license. Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen Docket No. 90-314, Memorandum Report and Order at ¶ 155.

² The Commission might utilize, as a base point, the combined value of the three 10 MHz blocks purchased in the BTA.

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forthcoming auction rules, a contract goaling or set-aside program for designated entities could have a major impact in carrying out the intent of Congress with respect to PCS. At the appropriate time, SBA would be willing to work with the Commission in developing a cooperative approach in this regard.

If the SBA can be of further assistance to the Commission, please do not hesitate to contact me at any time. We hope that these comments will be helpful as you finalize your auction rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Bowles', written over a horizontal line.

Erskine B. Bowles
Administrator

cc: Honorable Andrew Barrett
Honorable Rachelle Chong
Honorable Susan Ness
Honorable James Quello
William Kennard, General Counsel